

IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF SOUTH CAROLINA
 FLORENCE DIVISION

Anthony James, a/k/a Anthony Glenn)	C/A No.: 1:11-1646-HFF-SVH
James, Jr.,)	
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
Judge Deadra L. Jefferson; Jon Ozmint,)	
SCDC; Lisa A. Thomas, Attorney at)	
Law; William L. Runyon, Jr.; Daniel E.)	
Shearhouse; and Julie J. Armstrong,)	
)	
Defendants.)	
)	

This is a civil action filed by a state prisoner. Therefore, in the event that a limitations issue arises, Plaintiff shall have the benefit of the holding in *Houston v. Lack*, 487 U.S. 266 (1988) (prisoner's pleading was filed at the moment of delivery to prison authorities for forwarding to District Court). Under Local Civil Rule 73.02(B)(2) (D.S.C.), pretrial proceedings in this action have been referred to the undersigned United States Magistrate Judge.

PAYMENT OF THE FILING FEE:

By filing this case, Plaintiff has incurred a debt to the United States of America in the amount of three hundred fifty dollars (\$350). *See* 28 U.S.C. § 1914. This debt is not dischargeable in the event that Plaintiff seeks relief under the bankruptcy provisions of the United States Code. *See* 11 U.S.C. § 523(a)(17). The Prison Litigation Reform Act (PLRA) of 1996 permits a prisoner to file a civil action without prepayment of fees or security, but requires the prisoner "to pay the full amount of the filing fee" as funds are available. *See* 28 U.S.C. § 1915(a), (b).

Plaintiff has submitted an Application to Proceed Without Prepayment of Fees and Affidavit (Form AO 240) and a Financial Certificate, which are being construed as a Motion for Leave to Proceed *in forma pauperis*. *See* 28 U.S.C. § 1915(a)(1), (2). A review of the motion reveals that Plaintiff does not have the funds to pay the first installment of the filing fee. Therefore, the amount due from Plaintiff is currently three hundred fifty dollars (\$350). **The agency having custody of Plaintiff shall collect payments from Plaintiff's prisoner trust account in accordance with 28 U.S.C.**

§ 1915(b)(1) and (2), until the full filing fee is paid. *See Torres v. O'Quinn*, 612 F.3d 237, 252 (4th Cir. 2010) (“We hold that 28 U.S.C. § 1915(b)(2) caps the amount of funds that may be withdrawn from an inmate’s trust account at a maximum of twenty percent *regardless of the number of cases or appeals the inmate has filed.*”) (emphasis in original). Plaintiff’s Motion for Leave to Proceed *in forma pauperis* [Entry #3] is granted.

TO THE CLERK OF COURT:

This case is subject to summary dismissal based on an initial screening conducted pursuant to 28 U.S.C. § 1915 and/or 28 U.S.C. § 1915A. Therefore, the Clerk of Court shall **not** issue the summonses or forward this matter to the United States Marshal for service of process at this time.

The Clerk of Court shall not enter any change of address submitted by Plaintiff which directs that mail be sent to a person other than Plaintiff unless that person is an attorney admitted to practice before this court who has entered a formal appearance.

TO PLAINTIFF:

Plaintiff must place the civil action number (C/A No.) listed above on any document provided to the court provided in connection with this case. **Any future filings by Plaintiff in this case must be sent to the Clerk’s Office in Florence (Post Office Box 2317, Florence, South Carolina 29503).** All documents requiring Plaintiff’s signature shall be signed with Plaintiff’s full legal name written in Plaintiff’s own handwriting. *Pro se* litigants, such as Plaintiff, shall *not* use the “s/typed name” format used in the Electronic Case Filing System. In all future filings with this court, Plaintiff is directed to use letter-sized (8½ inches by 11 inches) paper only, to write or type text on one side of a sheet of paper only and not to write or type on both sides of any sheet of paper. Plaintiff is further instructed not to write to the edge of the paper, but to maintain one-inch margins on the top, bottom, and sides of each paper submitted.

Plaintiff is a *pro se* litigant. Plaintiff’s attention is directed to the following important notice:

You are ordered to always keep the Clerk of Court advised **in writing (Post Office Box 2317, Florence, South Carolina 29503)** if your address changes for any reason, so as to assure that orders or other matters that specify deadlines for you to meet will be received by you. If as a result of your failure to comply with this order, you fail to meet a deadline set by this court, **your case may be dismissed for violating this order.** Therefore, if

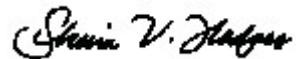
you have a change of address before this case is ended, you must comply with this order by immediately advising the Clerk of Court in writing of such change of address and providing the court with the docket number of all pending cases you have filed with this court. Your failure to do so will not be excused by the court.

PLAINTIFF'S MOTION TO APPOINT COUNSEL:

In separately-docketed motions, Plaintiff seeks appointment of counsel.[Entry #3, #12]. There is no right to appointed counsel in § 1983 cases. *Cf. Hardwick v. Ault*, 517 F.2d 295 (5th Cir. 1975). While the court is granted the power to exercise its discretion to appoint counsel for an indigent in a civil action, 28 U.S.C. § 1915(e)(1); *Smith v. Blackledge*, 451 F.2d 1201 (4th Cir. 1971), such appointment “should be allowed only in exceptional cases.” *Cook v. Bounds*, 518 F.2d 779, 780 (4th Cir. 1975). Rather, Plaintiff simply claims he is disabled because he is imprisoned.

After a review of the file, this court has determined that there are no exceptional or unusual circumstances presented which would justify the appointment of counsel, nor would Plaintiff be denied due process if an attorney were not appointed. *Whisenant v. Yuam*, 739 F.2d 160 (4th Cir. 1984). In most civil rights cases, the issues are not complex, and whenever such a case brought by an uncounseled litigant goes to trial, the court outlines proper procedure so the uncounseled litigant will not be deprived of a fair opportunity to present his or her case. In *Lewis v. Casey*, the Supreme Court rejected the notion that an inmate’s right to access the court from prison required the state “to enable the prisoner to discover grievances, and to litigate effectively once in court.” 518 U.S. 343, 354 (1996). The court noted that “[t]o demand the conferral of such sophisticated legal capabilities upon a mostly uneducated and indeed largely illiterate prison population is effectively to demand permanent provision of counsel, which we do not believe the Constitution requires.” *Id.* Accordingly, the Plaintiff’s requests for a discretionary appointment of counsel under 28 U.S.C. §1915 (e)(1) is denied.

IT IS SO ORDERED.



September 2, 2011
Florence, South Carolina

Shiva V. Hodges
United States Magistrate Judge